**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

ADMIRALTY & VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO. 3 OF 2002

M/s. Unique Pharmaceutical
Laboratories .. Plaintiffs.

vs.

1. M/s. Stalco Freight
International Co. (LIc)
& Anr. .. Defendants.

Mr. G. Desai with Ms. Milli D.V. Thakkar
i/by U. Ramadas for plaintiffs.
Mr. A. Shankar with R.A. Fernandes for
defendant no. 1.

**CORAM : S.U.KAMDAR, J.**

**DATE : 9th September, 2005.**

ORAL JUDGMENT :

. The present suit is filed by the plaintiffs for the recovery of a sum of Rs.11,32,583/- with interest thereon at the rate of 18% per annum from the date of the filing of the suit till realisation. Some of the material facts of the present case can be briefly enumerated as under :-

2. The plaintiffs carrying on the business in

the manufacturing, distribution and exporting of pharmaceutical products. The defendant no. 1 is a foreign company and is inter alia carrying on business of carriage of goods by sea. The 2nd defendant is an agent of the 1st defendant. The 1st defendant has its office at Dubai, UAE. The defendant no. 2 as an agent is carrying on business in Bombay.

3. On 25.3.2001, the plaintiffs shipped through the defendants a cargo of 509 cartons of pharmaceutical products under two invoices bearing Nos. IN/01186 for US $ 13,647.00 and IN/001187 for US $ 10,323.00. Both the invoices are dated 26.2.2001. It is the case of the plaintiffs that the said cargo was packed in sound condition and was entrusted to the 2nd defendant for voyage to Yerevan, Republic of Armenia for onward carriage to the buyers in Armenia. It is the case of the plaintiff that the said cargo was stuffed into F.C.L. Container bearing No. APLS 279834 and in respect of transportation of the said goods, the 2nd respondent issued a bill of lading No. MUM/YER/0317 dated 25.3.2001 at Mumbai. It is the case of the plaintiffs that the said issuance of the bill of lading is evidencing the contract of carriage by and between the plaintiff and the defendants under the provisions of the Carriage of Goods by Sea Act, 1925. The liability of the defendants to deliver

the said cargo to the destination is an absolute liability under the said Act. It is the further case of the plaintiffs that though the said bill of lading along with other documents was forwarded to the buyers but the buyers refused to accept the said bill of exchange and has returned the same. However, the plaintiff found that in spite of the said bill of exchange being not presented to the defendants, the defendant has handed over the delivery of the goods to the consignee. Thus, the buyer refused to pay the price of the said goods because the said payment was to be received at the time of presentation of the documents including the bill of lading and the same is required to be presented to the defendant and the defendants were required to hand over delivery of the said goods against the same. However, in view of the fact that the buyer received the goods without the said bill of lading, he has refused to accept the documents and the plaintiff has lost the price of the said goods which was to be recovered from the said buyer. It is the case of the plaintiff that this loss has been suffered by virtue of the fault on the part of the defendant to hand over the said goods to the consignee without presentation of the original bill of lading. Thus, the defendants have committed a breach of the contractual obligation and have not performed their statutory duties as contemplated under the said Act and, therefore, the defendants

are liable for the price of the said gods which comes to Rs. 11,32,583.00. It is the case of the plaintiff that on the said price the plaintiffs are also entitled to interest at the rate of 18% per annum and accordingly the present suit has been filed.

4. Both the defendant nos. 1 and 2 have filed separate written statements dated 6.8.2002. In both the written statements it has been inter alia contended that this Court does not have jurisdiction to try and entertain the present suit. It has been contended that the Laws of the United Arab Emuirates govern the contract/bill of lading whereon the plaintiffs have rested their present suit. The clauses in the Bill of lading expressly confer rights of exclusive jurisdiction in the courts at United Arab Emirates as being the proper forum to try the disputes arising thereunder. It has been contended that the plaintiffs having agreed to such a forum is not entitled to institute the proceedings in any other country other than the United Arab Emirates as the Court in United Arab Emirates are having exclusive jurisdiction to try and entertain the present suit. It has been thereafter contended that the suit is barred by law of limitation under the provisions of the Multimodal Transportation of Goods Act, 1993. It has been contended that the contract is governed by the said Multimodal

Transportation of Goods Act, 1993 and, therefore, the suit ought to have been filed within nine months from the accrual of cause of action. The delivery of the cargo was effected admittedly on 20.5.2001 and, therefore, the suit ought to have been instituted within nine months from the said date. On merits, it has been contended that it is not necessary that delivery of the goods can be effected against production of the bill of lading. However, it is not disputed that the goods have been delivered to the consignee or any third person without there being any bill of lading produced. The defences of the defendant no. 1 and defendant no. 2 are identical save and except the 2nd defendant has also contended that he is not liable because he has acted on behalf of the disclosed principal.

5. On the aforesaid pleadings, the issues were framed which are as under :-

"1. Whether the plaintiffs prove that they are a limited company registered under the Indian Companies Act and whether they have an authority or title to sue in view of the above and under the Bills of Lading Act?

2. Whether the suit against defendant No. 2 who have acted as an agents of defendant No. 1

i.e. the disclosed principals is maintainable under the Contract Act?

3. Whether the suit is liable to be dismissed for misjoinder of Defendants and non-joinder of Road Transport Company, Iran?

4. Whether the plaintiffs prove that this Honourable Court has jurisdiction to try and entertain the suit despite an agreement in the Bill of Lading that the Court at United Arab Emirates will have exclusive jurisdiction?

5. Whether the suit is within the period of limitation under the terms of Multimodal Transportation of Goods Act 1993?

6. Whether the plaintiffs prove that the defendants are liable/responsible to deliver the cargo to the consignee directly despite the fact that the delivery of the cargo was on the basis of container movement report practice?

7. Whether the plaintiffs prove that the defendants have delivered the container in the absence of the original bills of lading to be produced by the consignees?

8. Whether the plaintiffs prove that the defendants have not carried out their contractual obligations and statutory duties whilst delivering the cargo the consignees and/or that the defendants were negligent with regard to delivery of the cargo and are guilty of conversion?

9. Whether the plaintiffs prove that the CIF value of the cargo was valued at Rs.11,32,583/- and whether they are entitled to the said sum of Rs.11,32,583/- together with interest @ 18% per annum or any other rate?

10. What reliefs?

11. What orders?"

6. Issue No. 4 is being heard by me and if the issue no. 4 is answered against the plaintiff then in that event other issues are not required to be considered because the issue no. 4 is issue of jurisdiction in the present case.

7. The matter was referred to the Commissioner by an order dated 23.8.2002 passed by this Court for recording evidence by one Advocate A.M. Vernekar

who has filed his report dated 8.6.2005. Before the Commissioner the evidence has been led by the plaintiff of one Mr. Ajay Lalpatia, Constituted Attorney of the 2nd Defendant and he has deposed in the present case.

8. Now considering the issue of jurisdiction, the learned counsel for the defendants has contended that this Court has no jurisdiction to entertain nd try the present suit. He has placed reliance upon the clause contained in the bill of lading Exhibit P-2 collectively which reads as under :-

> "THE CONTRACT EVIDENCED BY/OR CONTAINED IN THIS BILL OF LADING SHALL BE GOVERNED BY THE LAW OF THE UNITED ARAB EMIRATES AND ANY CLAIM OR DISPUTE ARISING HEREUNDER OR IN CONNECTION HEREWITH SHALL (WITHOUT PREJUDICE TO THE CARRIERS RIGHTS TO COMMENCE PROCEEDINGS IN ANY OTHER JURISDICTION) BE SUBJECT TO THE JURISDICTION OF THE COURTS OF THE UNITED ARAB EMIRATES"

9. The learned counsel for the defendants has contended that in the light of the aforesaid clause, the UAE Court alone shall have exclusive jurisdiction. It has been contended that if the two parties choose, the foreign Court has territorial

jurisdiction then that Court alone can have jurisdiction to entertain and try the suit. In support of the aforesaid contention, reliance has been placed by the learned counsel for the defendants on the judgement of the Apex Court in the case of Modi Entertainment Network & another vs. W.S.G. Cricket Pvt. Ltd., reported in 2003 (5) Bom. C.R. 754. He has placed reliance on paras 10, 25 and 26 of the said judgement which read as under:

> "10. In regard to jurisdiction of courts under the Code of Civil Procedure (C.P.C.) over a subject-matter one or more courts may have jurisdiction to deal with it having regard to the location of immovable property place of residence or work of a defendant or place where cause of action has arisen. Where only one Court has jurisdiction it is said to have exclusive jurisdiction, where more courts than one have jurisdiction over a subject-matter, they are called courts of available or natural jurisdiction. The growing global commercial activities gave rise to the practice of the parties to a contract agreeing before hand to approach for resolution of their disputes thereunder, to either any of the available courts of natural jurisdiction and thereby create an exclusive

or non-exclusive jurisdiction in one of the available forum or to have the disputes resolved by a foreign Court of their choice as a neutral forum according to the law applicable to that Court. It is a well-settled principle that by agreement the parties cannot confer jurisdiction, where none exists, on a Court to which C.P.C. applies, but this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign Court; indeed in such cases the English Courts do permit invoking their jurisdiction. Thus, it is clear that the parties to a contract may agree to have their disputes resolved by a foreign Court termed as a 'neutral Court' or 'Court of choice' creating exclusive or non-exclusive jurisdiction in it."

"25. A plain reading of this clause shows that the parties have agreed that their contract will be governed by and be construed in accordance with English law and they have also agreed to submit to the non-exclusive jurisdiction of English Courts (without reference to English conflict of law Rules). We have already observed above that recitals in regard to submission to exclusive or

non-exclusive jurisdiction of a Court of choice in an agreement are not determinative. However, as both the parties proceeded on the basis that they meant non-exclusive jurisdiction of the English Courts, on the facts of this case, the Court is relieved of the interpretation of jurisdiction clause. Normally, the Court will give effect to the intention of the parties as expressed in the agreement entered into by them except when strong reasons justify disregard of the contractual obligations of the parties. In Donohue's case (supra) although the parties to the agreement stipulated to submit to the exclusive jurisdiction of the English courts, the House of Lords found that it would not be in the interest of justice to hold the parties to their contract as in that case strong reasons were shown by the respondent. It was held necessary that a single trial of all the claims of the parties by one forum would be appropriate and as all the parties to the New York proceedings were not parties to the agreement stipulating exclusive jurisdiction of the English Court and as all the claims before the New York Court did not arise out of the said contract so they could not have been tried in the English Court. It was urged that in the circumstances parallel

proceedings ---one in English and another in New York --- would have to go on which might result in inconsistent decisions. Those facts were considered as strong reasons to decline to grant anti-suit injunction though the parties had agreed to the exclusive jurisdiction of the English Court. In contract in SABAH's case (supra) even though GOP filed the suit first in the Court of natural jurisdiction and sought anti-suit injunction against SABAH restraining them from proceeding with the action brought by them in the English Court, the Court of Appeal found that non-exclusive jurisdiction clause in the agreement of guarantee executed by GOP was binding on them. The action of GOP in filing the suit earlier in the Court of natural jurisdiction was held to be clearly in breach of contract and in the context of the non-exclusive jurisdiction clause, oppressive and vexatious unless the GOP could show strong reasons as to why parallel proceeding would be justified. The only ground urged for continuance of proceeding in Pakistan Court was that it was a convenient forum which was considered not strong enough for the GOP to disregard the contractual obligation of submission to the jurisdiction of the English Court for

resolution of disputes. The Court of Appeal, upheld the anti-suit injunction granted by the learned Judge at the first instance as also the order declining to stay the English suit.

"26. In the instant case though the learned Single Judge proceeded on the prima facie finding that the proceedings in the English Courts would be oppressive and vexatious, in our view, those findings, recorded at the stage of passing an ad interim order, would not bind the same learned Judge much less they would bind the Appellate Court or the parties thereto at subsequent stage of the same proceeding because it cannot operate as issue estoppel. It cannot be laid down as a general principle that once the parties have agreed to submit to the jurisdiction of a foreign Court, the proceedings or the action brought either in the Court of natural jurisdiction or in the Court of choice will per se be oppressive or vexatious. It depends on the facts of each case and the question whether the proceedings in a Court are vexatious or oppressive has to be decided on the basis of the material brought before the Court. Having perused the plaints in both the suits and the contract we are of the

view that the proceeding in the English Court for recovery of the minimum guaranteed amount under the contract cannot, at this stage be said to be oppressive or vexatious. It is true that the courts would have inclined to grant anti-suit injunction to prevent breach of contractual obligation to submit to the exclusive or non-exclusive jurisdiction of the Court of choice of the parties but that is not the only ground on which anti-suit injunction can be granted. As is apparent the appellants brought the suit in the Court of natural jurisdiction for adjudication of the disputes arising under the contract for which the parties have agreed to submit to the non-exclusive jurisdiction of the English Court in accordance with English law though the English Court has no nexus with the parties or the subject-matter and is not the natural forum. But then the jurisdiction clause indicates that the intention of the parties is to have the disputes resolved in accordance with the principles of English law by an English Court. Unless good and sufficient reasons are shown by the appellants, the intention of the parties as evidenced by their contract must be given effect to. Even when the appellants had

filed the suit earlier in point of time in the Court of natural forum and the respondent brought action in the English Court which is the agreed forum or forum of the choice having regard to the expressed intention of the parties, no good and sufficient reason is made out to grant anti-suit injunction to restrain the respondent from prosecuting the English action as such an order would clearly be in breach of agreement and the Court will not, except when proceedings in foreign Court of choice result in perpetuating injustice aid a party to commit breach of the agreement. To apply the principle of Donohue's case good and sufficient reasons (strong reasons) should be shown to justify departure from the contractual obligations. Here, two contentions have been urged; the first is that the English Court is forum non-conveniens in view of the alleged breach of the agreement by the respondent in the manner not foreseen. This, in our view, is far from being a good and sufficient reason to ignore the jurisdiction clause. Even otherwise the fact that the parties had agreed to resolve their disputes arising under the agreement, shows that they had foreseen possible breach of agreement by any of the parties and provided for the

resolution of the disputes which might arise therefrom. In the context, the foreseability test would take in circumstances which render approaching the forum of choice impossible like the court of choice merging with other Court and losing its identity or a vis major etc., which would make it impossible for the party seeking anti-suit injunction, to prosecute the case before the forum of choice. In our view on the facts of this case, the foreseability test cannot be extended to the manner of breach of the contract so as to turn the forum of choice into forum non-conveniens. Circumstances such as comparison of litigation expenses in England and in India or the hardship and incurring of heavy expenditure on taking the witnesses to the English Court, would be deemed to have been foreseen by the parties when they agreed to submit to the jurisdiction of the English Court in accordance with the principles of English law and the said reasons cannot be valid grounds to interdict prosecution of the action in the English Court of choice. And the second is that English Court has no connection with either of the parties or the subject-matter and it is not a Court of natural jurisdiction. This reason can be taken note

of when strong reasons are shown to disregard the contractual obligation. It cannot be a good and sufficient reasons in itself to justify the Court of natural jurisdiction to interdict action in a foreign Court of choice of the parties."

10. Alternatively, it has contended that in the light of the aforesaid clause the exclusive jurisdiction is vested in the Court at UAE by virtue of the choice of the parties. He has further contended that the defendant no. 1 is carrying on business at UAE and, therefore, the UAE Court has jurisdiction. He has further contended that though the goods are dispatched from Bombay and bill of lading is issued at Bombay, still by virtue of the fact that the defendants are carrying on business at UAE they have jurisdiction to entertain and try the present suit. It has been further contended that when two courts has a concurrent jurisdiction then the parties can choose jurisdiction of one of the courts and in the present case the parties have chosen the forum being the Court at UAE and, therefore, the said UAE Court shall have exclusive jurisdiction to entertain and try the present suit.

11. He has also relied upon the judgment of the learned Single Judge of this Court in support of the aforesaid contention in the case of Maharashtra

State Road Development Corporation Ltd., v. Larsen & Toubro Ltd, & Anr., reported in 2004(2) ALL MR 315 and also relied upon judgment of the Supreme Court in the case of A.B.C. Laminart Pvt. Ltd, and another, vs. A.P. Agencies, Salem reported in AIR 1989 SC 1239, particularly paragraph 15 of the said judgment.

12. On the other hand, the learned counsel for the plaintiffs has contended that in so far as the law as to the jurisdiction is concerned, it is well settled by the judgment of the Apex Court in the case of Patel Roadways Limited vs. Prasad Trading Company, reported in AIR 1992 SC 1514, particularly paras 7, 8 and 9. The learned counsel for the plaintiffs has also relied upon rule 192 of Brussel Convention to support his contention that the country in which the contract is concluded will be presumed that the contract is most closely connected with that country and it has been contended that, therefore, this Court shall have jurisdiction. The said rule 192 sub rules (3) and (4) which are relevant for the purpose of the considering the argument of the learned counsel for the plaintiffs are reproduced hereinunder:-

> (3) If the country in which, at the time the contract is concluded, the carrier has his principal place of business is also the

country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated, it will be presumed that the contract is most closely connected with that country.

(4) The presumption in clause (3) will be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country."

13. I have considered the rival contentions of the parties. In so far as jurisdiction is concerned, I am of the opinion that considering the judgment of the Apex Court in the case of Modi Entertainment Network & another vs. W.S.G. Cricket Pvt. Ltd., (supra) it is clear that if the parties have chosen a forum of a foreign court then in that event the normal principal of jurisdiction which is set out by various judgments of the Apex Court has no application. The issue where the Court has a concurrent jurisdiction and then only the party can choose one of the forum for the purpose of giving exclusivity to such Court would not apply in cases where the jurisdiction is vested in a court of foreign country. The law in this regard has been unfolded by the Apex Court in the case of Modi Entertainment Network & Anr. vs. W.S.G. Cricket Pvt. Ltd., (supra) in which the Supreme Court has

held that when there are foreign countries in which jurisdiction is vested even if that Court has otherwise no natural jurisdiction it still can have exclusive jurisdiction due to choice of the parties. It is held that parties by consent can vest a court with a jurisdiction which does not have any inherent jurisdiction and then in such a case only that foreign Court alone shall have jurisdiction to entertain and try the suit. The Apex Court has made a distinction between a choice of Indian Court and Foreign Court conferring exclusive jurisdiction by choice of the parties. It has been held that the principal of concurrent jurisdiction is only applicable when in India two courts has a natural jurisdiction then one of the Court can be chosen by the parties. It is because it has been consistently held by the Apex Court that the Court which has no jurisdiction can not be clothed with jurisdiction by consent of the parties. However, the said principal has not been accepted by the Apex Court in the case of Mody Entertainment Network & Anr. (supra) and distinction has been made when there is a foreign court. In that case also a non-exclusive jurisdiction was vested in the foreign Court but the Apex Court has held that whether the foreign court has natural jurisdiction or not or whether exclusivity is conferred on that Court by way of jurisdiction or a non-exclusive jurisdiction is vested in that Court the said Court will be a

binding forum between the parties because the parties of their own choice have chosen such foreign court for the purpose of determination of the jurisdiction. The reliance placed by the learned counsel for the defendant on the aforesaid judgment of Patel Roadways (supra ) has no application in the present case because in Patel Roadways case the Court was not considering a case where exclusive or non-exclusive jurisdiction was vested in a foreign court but the Court was concerned with the jurisdiction of two courts which were having concurrent jurisdiction in India. Thus, the Apex Court itself has held in the case of Modi Entertainment Network (supra) that such a principal has no application when parties have of their own choice have chosen a foreign court for the purpose of determination of the jurisdiction. In that light of the matter, I am of the opinion that in view of clause quoted hereinabove, in the present case the Court at UAE has been vested exclusive jurisdiction and, therefore, that Court alone will have jurisdiction to entertain and try the present suit. In light of the clause which has been entered upon by and between the plaintiffs and the defendants as set out hereinabove and in light of the law laid down by the Apex court in the case of Mody Entertainment Network (supra), I am of the opinion that this Court will have no jurisdiction to try and entertain the present suit.

14. Now considering the alternative argument on jurisdiction, I am of the opinion that the Court at UAE will alone have jurisdiction. It is not disputed between the parties that the 1st defendant carries on business at UAE. Under Section 20 of the Civil Procedure Code, the Court where the defendant carries on business can have concurrent jurisdiction if the suit is filed on the basis of the defendant carrying on business and not on the basis where the cause of action arises. However, the learned counsel for the defendant has contended that the suit in the present case is filed on the basis of cause of action and not on the basis where the defendant carries on business and, therefore, while determining whether the UAE Court has jurisdiction or not, the Court cannot go into whether the defendant carries on business in foreign country or not but only enquiry which is permitted to make is whether any part of cause of action has arisen in UAE or not. It has been contended by the plaintiffs that no part of cause of action has arose in UAE and, therefore, UAE Court does not have jurisdiction. In my opinion, the aforesaid argument of the learned counsel for the defendant cannot be accepted. It is because to determine whether the UAE Court has concurrent jurisdiction or not, it is not necessary that the jurisdiction must be considered only from the angle of cause of action

but in my opinion even if the defendant carries on business then that Court can have a concurrent jurisdiction to entertain and try the present suit whether as per clause 12 of the Letters Patent or Section 20 of the Civil Procedure Code. In both the cases, the Court at UAE will have at least a concurrent jurisdiction because the defendant carries on business at UAE. Thus, in any event, I am of the opinion that in the present case both the Courts at Bombay as well as UAE will have concurrent jurisdiction and in such cases parties have chosen one of the two Courts as having jurisdiction to try disputes between the parties. I am further of the opinion such a course is permissible and once parties have chosen one of the two courts having concurrent jurisdiction then only such court will have exclusive jurisdiction. In the present case such choice is of the UAE Court and not the Court at Bombay. In the aforesaid circumstances, I am of the opinion that even on the alternative argument, this Court shall have no jurisdiction to entertain and try the present suit. I am supported in the aforesaid view by the judgment of the Apex Court in the case of A.B.C. Laminart Pvt. Ltd., vs. A.P. Agencies, Salem (supra) and the judgment of the learned Single Judge of this Court which has followed the aforesaid view of the Apex Court. In both the cases it has been held that if the defendant carries on business at one place then that

Court will have to be considered as having jurisdiction to entertain and try the present suit.

15. The learned counsel for the defendant however contended that the said clause does not bind the parties because it has been held by the Apex Court that to confer an exclusive jurisdiction, the agreement between the parties must use the word "exclusive" and in absence of the user of the word "exclusive" that Court cannot be considered having conferred exclusive jurisdiction by the parties. The aforesaid argument is merely stated to be rejected because the Apex Court has in the case of Modi Entertainment Network (supra) considered in detail the arguments on both the grounds of exclusivity and non-exclusivity and it has been held by the Apex Court that once there is agreement between the parties choosing a foreign court then even a non-exclusive jurisdiction would confer a jurisdiction to a court alone if the said Court is situated in foreign country to determine the disputes between the parties.

16. The learned counsel for the plaintiffs has thereafter contended that under jurisdiction clause the law which is governing the parties is a UAE law. It has ben contended that the defendant while filing the written statement has not set out as under which law of UAE the said Court will have exclusive

jurisdiction and, therefore, the aforesaid issue of jurisdiction ought not to be considered and, therefore, no relief should be granted to the defendant. However, in my opinion, the aforesaid issue which the plaintiffs have sought to raise in fact goes against the plaintiffs themselves. If the clause set out hereinabove provides that the transaction and the dispute arising therefrom must be governed by UAE law then the plaintiff while filing the suit is required to set out the necessary provision of UAE law on the basis of which he has raised this claim and according to him under UAE laws this Court will have jurisdiction. The reliance placed by the learned counsel for the plaintiffs on the case of Hari Shankar Jain v. Sonia Gandhi, reported in AIR 2001 SC 3689 in fact operates against the plaintiffs. The said judgment states that if the person comes to the Court and files a proceeding by placing reliance on a foreign law then he must plead as an issue of fact the various provisions of such foreign law. In the present case if the plaintiff is relying upon the aforesaid clause to show that the transaction is governed by the UAE law then it is for him first to show on what provisions of UAE law he has filed the present suit and has sought the decree and the amount claimed in the present suit. He has nowhere pleaded that the suit transaction is governed by the UAE law. However, while repelling the argument, the

learned counsel is seeking to place reliance on the aforesaid judgment to contended that the defendant must plead the foreign law. On a plain simple reading of the aforesaid judgment which I have followed, in my own judgement in the case of Dallan Albaraka Investment Co. ltd., vs. MT "SYMPHONE 1" in Admiralty Suit No. 30 of 2002 decided on 18.7.2005, the ratio of the judgment is other way round that the person who seeks to plead that the suit transaction is governed by foreign law, then it is for him to plead which part of the provisions of the foreign law governs his transaction and what is that foreign law which must be pleaded as an issue of fact. Admittedly, the plaintiffs are silent and the plaintiffs have not pleaded any foreign law in the suit. Thus, considering the argument of the learned counsel for the plaintiffs, the aforesaid issue is also required to be answered against the plaintiff and in favour of the defendants as the plaintiffs have failed to plead the foreign law in their plaint. Thus, the suit itself is not maintainable. However, I am not going in the aforesaid issue in detail because the issue of maintainability is not raised in the present suit. I did point out to the learned counsel for the plaintiffs that in view of the fact that the issue of maintainability which is available having not been raised, he should not insist on the present issue being determined. However, he insists on

pressing the said issue of the transactions being governed by the foreign law. In that light of the matter, I am required I hold that the present suit filed by the plaintiffs is not maintainable and this Court lacks the territorial jurisdiction to entertain and try the present suit. In light of the aforesaid, I pass the following order.

> The suit is dismissed for want of jurisdiction. However, there shall be no order as to costs.